Supreme Court, U.S.
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Docket No. ___

In The

# Supreme Court of the United States

October Term, 1997

SKY SHIPPING LTD.,

*Conditional Cross-Petitoner,*

vs.

MAMMOET SHIPPING B.V., MODUL CARRIERS A.G. & CO. "TITAN SCAN" SCHIFFARTS K.G., M/V TITAN SCAN, AND ITEL CONTAINER CORPORATION,

*Cross-Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

## CONDITIONAL CROSS-PETITION TO THE PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

Whether, with respect to a bill of lading to which the United States Carriage of Goods by Sea Act ("U.S. COGSA"), 46 U.S.C. 1300, *et seq.*, applies *ex proprio vigore*, the inclusion of a clause providing for "English law to apply" unambiguously evidences the Non-Vessel Owner Common Carrier's consent to a liability limit higher than that provided by U.S. COGSA and, if so, whether such clause requires the application of the liability of England's Hague-Visby Rules where the clear language of the bill of lading would require the application of the liability limit of Japanese COGSA?

## LIST OF PARTIES

The parties to the proceedings below are those set forth in the caption. Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, conditional cross-petitioner has no parent or subsidiary companies.

## OPINIONS AND JUDGMENTS BELOW

The United States Court of Appeals for the Eleventh Circuit entered its order and judgment on May 1, 1998. The opinion of the court of appeals is reported at 139 F.3d 1450 (11th Cir. 1998). The order and judgment of the United States District Court for the Southern District of Georgia are reported at 1997 A.M.C. 1568 (S.D. Ga. 1996).

## JURISDICTION

The court of appeals entered its judgment on May 1, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Sky Shipping Ltd. also relies on Rule 12.5 of the Rules of the Supreme Court of the United States. The Petition for Writ of Certiorari was docketed on July 30, 1998.

## STATUTORY PROVISION INVOLVED

The U.S. COGSA package limitation provides in relevant part as follows:

> (5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding $500.00 per package lawful money of the United States . . . unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. . . .

> *By agreement* between the carrier, master, or agent of the carrier, and the shipper another maximum amount than that mentioned in this paragraph may be fixed. . . .

46 U.S.C. § 1304(5) (emphasis added).

## STATEMENT OF THE CASE

Sky Shipping Ltd., p/k/a Candyline Ltd. (hereinafter "Candyline"), adopts the Petitioner's Statement of the Case as outlined in Mammoet Shipping B.V., Modul Carriers A.G. & Co. "TITAN SCAN" Schiffarts K.G., and M/V TITAN SCAN's Petition for Writ of Certiorari (Docket No. 98-204).

## REASONS FOR GRANTING THE CROSS-PETITION

The United States Court of Appeals for the Eleventh Circuit has ruled that the nominal differences between the Candyline/Itel booking note and bill of lading and the Candyline/Mammoet booking note and bill of lading were not significant enough to "constitute adequate grounds upon which to distinguish the statutory schemes applicable to the liability limits of the respective contracts." (Petitioner's App. A, 12a). As the two (2) contracts call for the same controlling statutory liability regime, an issue not now in dispute, the same liability regime must apply to both contracts irrespective of this Court's ultimate determination as to the applicable liability regime. In other words, if this Court should determine that the United States Carriage of Goods by Sea Act,

the Japanese Carriage of Goods by Sea Act or the Hague-Visby Rules apply to the Candyline/Mammoet contract, then the same liability regime must apply to the Candyline/Itel contract.

## CONCLUSION

For the reasons set forth above, and if the Petition for Writ of Certiorari of Mammoet Shipping B.V., et al., is granted, Candyline prays that this Honorable Court grant its Conditional Cross-Petition for Writ of Certiorari.

Respectfully submitted,

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## APPENDIX

Sky Shipping Ltd., p/k/a Candyline Ltd., adopts the Petitioner's Appendix as compiled in Mammoet Shipping B.V., Modul Carriers A.G. & Co. "TITAN SCAN" Schiffarts K.G., and M/V TITAN SCAN's Petition for Writ of Certiorari (Docket No. 98-204).